CLOSED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

United States of America

v.

Heriberto Hernandez-Fernandez

Citizen of Mexico

USM#: 86434-008 DOB: 1964

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed on or After November 1, 1987)

No. 07-10459-001M-SD

Matthew Johnson (AFPD)
Attorney for Defendant

ICE#: A78 625 489

THE DEFENDANT ENTERED A PLEA OF guilty on 7/23/2007 to Count TWO of the Complaint.

ACCORDINGLY, THE COURT HAS ADJUDICATED THAT THE DEFENDANT IS GUILTY OF THE FOLLOWING OFFENSE(S): violating Title 8, USC § 1325, Illegal Entry, a Petty offense, as charged in Count TWO of the Complaint.

IT IS THE JUDGMENT OF THE COURT THAT the defendant is hereby committed to the custody of the Bureau of Prisons for a term of ONE HUNDRED TWENTY (120) DAYS on Count TWO, with credit for time served.

IT IS FURTHER ORDERED that all remaining counts are dismissed on motion of the United States.

CRIMINAL MONETARY PENALTIES

The defendant shall pay to the Clerk the following total criminal monetary penalties:

SPECIAL ASSESSMENT: $Remitted **FINE:** $ **RESTITUTION:** $

If incarcerated, payment of criminal monetary penalties are due during imprisonment at a rate of not less than $25 per quarter and payment shall be made through the Bureau of Prisons' Inmate Financial Responsibility Program. Criminal monetary payments shall be made to the Clerk of U.S. District Court, Attention: Finance, 880 Front Street, San Diego, California 92101. Payments should be credited to the various monetary penalties imposed by the Court in the priority established under 18 U.S.C. § 3612(c). The total special assessment of $Remitted shall be paid pursuant to Title 18, United States Code, Section 3013 for Count TWO of the Complaint.

Any unpaid balance shall become a condition of supervision and shall be paid within prior to the expiration of supervision. Until all restitutions, fines, special assessments and costs are fully paid, the defendant shall immediately notify the Clerk, U.S. District Court, of any change in name and address. The Court hereby waives the imposition of interest and penalties on any unpaid balances.

IT IS FURTHER ORDERED that the Clerk of the Court deliver two certified copies of this judgment to the United States Marshal of this district.

The Court orders commitment to the custody of the Bureau of Prisons.
The defendant is remanded to the custody of the United States Marshal.

Date of Imposition of Sentence: **Monday, July 23, 2007**

______________________________ Date 7/23/2007______________
JAY R. IRWIN, United States Magistrate Judge

RETURN

I have executed this Judgment as follows:______________________________

Defendant delivered on ____________ to ______________________ at _________________________, the institution designated by the Bureau of Prisons, with a certified copy of this judgment in a Criminal case.

______________________________ By:______________________________
United States Marshal Deputy Marshal
07-10459-001M-SD -

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA - Yuma

MAGISTRATE JUDGE'S MINUTES

DATE: 7/23/2007 CASE NUMBER: 07-10459-001M-SD

PLEA/SENTENCING MINUTES

USA vs. Heriberto Hernandez-Fernandez

U.S. MAGISTRATE JUDGE: JAY R. IRWIN Judge #: 70BK

U.S. Attorney ____________________ INTERPRETER REQ'D Ricardo Gonzalez

LANGUAGE: Spanish

Attorney for Defendant Matthew Johnson (AFPD)

DEFENDANT: ☒ PRESENT ☐ NOT PRESENT ☐ RELEASED ☒ CUSTODY

DOA 7/20/07 ☒ Complaint Filed ☒ Appointment of counsel hearing held

☐ Financial Afdvt taken ☒ No Financial Afdvt taken ☐ Financial Afdvt sealed

☒ Initial Appearance

DETENTION HEARING: ☐ Held ☐ Cont'd ☐ Reset ☐ UA

Set for: before:

☐ Defendant ordered temporarily detained in the custody of the United States Marshal

☐ Defendant ordered released (see order setting cond of rel) ☐ Bail set at $__________

☐ Defendant continued detained pending trial ☐ Flight Risk ☐ Danger

PLEA HEARING: ☒ Held ☐ Cont'd ☐ Reset

Set for: before:

☐ Consent to be tried by a Magistrate Judge signed ☐ Class A Misd ☐ Class B Misd ☐ Class C Misd

☐ Consent of Defendant ☐ Information filed ____________ ☐ Complaint filed ____________

☒ Defendant sworn and examined by the Court ☒ Plea of Guilty ☐ Not Guilty ☒ Entered to Counts TWO

☐ Defendant states true name to be _____. Further proceedings ORDERED in defendant's true name.

☒ Plea of Guilty entered as to Ct(s) TWO of the ☐ Information ☐ Indictment ☒ Complaint

☒ Court recommends/or accepts defendant's plea and finds plea to be freely and voluntarily given.

☐ Plea agreement: ☐ Lodged ☐ Filed ☐ Sealed

☐ Court does not accept defendant's plea of guilty because ____________

☐ PSI ORDERED ☐ EXPEDITED ☒ PSI waived ☐ Time waived for passage of sentence

☐ Continued for sentence to __ before ____________

☒ To be dismissed upon entry of the judgment, Ct(s) ONE

☒ ORDER vacate trial date/motion hearing/mtns moot

☐ ORDER defendant remain released pending sentence ☒ remanded to USM

SENTENCING:

☒ Defendant committed to Bureau of Prisons for a period of 120 days ☐ Probation/Supervised Release for ________

☒ Special Assessment $ REMITTED ☐ Fine $______ ☐ Restitution $________

Other: ____________________

RECORDED: CS

BY: Angela J. Tuohy, Deputy Clerk

UNITED STATES DISTRICT COURT **MAGISTRATE JUDGE'S MINUTES**
DISTRICT OF ARIZONA - Yuma

DATE: 7/21/07 CASE NUMBER: 07-10459M-001

USA vs. Heriberto Hernandez-Fernandez

U.S. MAGISTRATE JUDGE: MARK W REEVES FOR JAY R. IRWIN #: 70BK

A.U.S. Attorney ______ INTERPRETER Ricardo Gonzalez
LANGUAGE Spanish

Attorney for Defendant _
MATERIAL WITNESS(es): ______
MATERIAL WITNESS(es) state true name(s) to be: ______
Attorney for Material Witness(es): _

DEFENDANT: ☒ PRESENT ☐ NOT PRESENT ☒ CUSTODY

DOA 7/20/07
☐ Financial Afdvt taken
☐ Rule 5(c)(3)

☒ Initial Appearance
☐ Defendant Sworn
☐ Defendant states true name to be ___. Further proceedings ORDERED in Defendant's true name.

☐ Appointment of counsel hearing held
☐ Financial Afdvt sealed

DETENTION HEARING: ☐ Held ☐ Con't ☐ Submitted ☐ Reset Set for: Before: ☒ Defendant ordered temporarily detained in the custody of the United States Marshal ☐ Defendant ordered released ______ ☐ Defendant continued detained pending trial ☐ Flight risk ☐ Danger	**IDENTITY HEARING:** ☐ Held ☐ Con't ☐ Submitted ☐ Reset ☐ Waived Set for: Before: ☐ Warrant of removal issued.
PRELIMINARY HEARING: ☐ Held ☐ Con't ☐ Submitted ☐ Reset ☐ Waived Set for: Before: ☐ Probable cause found ☐ Dismissed ☐ Held to answer before District Court	**STATUS HEARING:** re: ______ ☐ Held ☐ Con't ☐ Reset Set for: Before:

Other: Appointment of counsel, plea and possible sentence set for 7/23/07 at 2:00 pm before Magistrate Judge Irwin.

Recorded by Courtsmart (2 min)
BY: Angela J. Tuohy
Deputy Clerk

7/20

United States District Court

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA
V.
Heriberto HERNANDEZ-Fernandez
Citizen of Mexico
YOB: 1964
A78 625 489
Illegal Alien

CRIMINAL COMPLAINT

CASE NUMBER: 07-10459M-SD

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief.

COUNT I

That on or about March 20, 2001, Defendant Heriberto HERNANDEZ-Fernandez was arrested and removed from the United States to Mexico through the port of Laredo,Texas, in pursuance of law, and thereafter on or about July 20, 2007, Defendant was found in the United States near Andrade, California within the Southern District of California, the Secretary of the Department of Homeland Security not theretofore having consented to any reapplication by the Defendant for admission into the United States and after the Defendant had willfully and unlawfully returned and remained in the United States; in violation of Title 8, United States Code, Section 1326 (Felony).

COUNT II

That on or about July 20, 2007, within the Southern District of California, Defendant Heriberto HERNANDEZ-Fernandez, an alien, did knowingly and willfully enter the United States at a time or place other than as designated by Immigration Officers; in violation of Title 8, United States Code, Section 1325 (Misdemeanor).

Continued on the attached sheet and made a part hereof. ☒ Yes ☐ No

David Bon

Signature of Complainant
David Bon
Senior Patrol Agent

Sworn to before me and subscribed in my presence,

July 21, 2007 at Yuma, Arizona
Date City and State

James Montgomery, Acting U.S. Magistrate
Name & Title of Judicial Officer

Signature of Judicial Officer

STATEMENT OF FACTUAL BASIS

Defendant: Heriberto HERNANDEZ-Fernandez

Dependents: 3 Mexican

IMMIGRATION HISTORY: The Defendant was last removed through Laredo,Texas on March 20, 2001. The Defendant has a total of six apprehensions by Border Patrol.

CRIMINAL HISTORY:

DATE/LOCATION		**OFFENSE**	**DISPOSITION**
3/14/01	Kansas City, MO	Entry W/O Inspection	**ORDERED REMOVED**
7/16/05	Phoenix, AZ	Crim Tresp 3rd Degree/ Prop	**GUILTY-1 DAY JAIL**
2/17/06	Phoenix, AZ	Molestation of Child	**GULTY-Jail, 1 YR PROB**
		Burglary 2nd Degree	**DISMISSED**

Narrative: The Defendant, a citizen of Mexico and illegally within the United States, was encountered by Yuma Border Patrol agents near Andrade, California.

The Defendant was questioned as to his citizenship and immigration status. From that questioning agents determined that the Defendant is an undocumented national of Mexico and illegally in the United States.

The Defendant was transported to the Yuma station for processing. During processing, questioning and computer record checks the above criminal and immigration information was obtained as it relates to this Defendant.

The Defendant last entered the United States illegally without inspection near Andrade, California on July 20, 2007.

Charges: 8 USC§1326 (Felony)
8 USC§1325 (Misdemeanor)

Signature of Complainant

Sworn to before me and subscribed in my presence,

July 21, 2007
Date

Signature of Judicial Officer

Probable Cause Statement

I, Senior Patrol Agent David Bon, declare under penalty of perjury, the following is true and correct:

Defendant: Heriberto HERNANDEZ-Fernandez

Dependents: 3 Mexican

IMMIGRATION HISTORY: The Defendant was last removed through Laredo,Texas on March 20, 2001. The Defendant has a total of six apprehensions by Border Patrol.

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The Defendant was transported to the Yuma station for processing. During processing, questioning and computer record checks the above criminal and immigration information was obtained as it relates to this Defendant.

The Defendant last entered the United States illegally without inspection near Andrade, California on July 20, 2007.

Executed on: Date *July 21, 2007* *Time:* *8:15 AM*

Signed: [signature] *Senior Patrol Agent*

Finding of Probable Cause

On the basis of the facts presented in the foregoing Probable Cause Statement, consisting of one page(s), I find probable cause to believe that the defendant(s) named therein committed the offense on July 20, 2007 in violation of Title 8, United States Code, Section(s) 1326 and 1325.

Finding made on: Date 7/21/07 *Time* 1132am

Signed: [signature] *United States Magistrate Judge*